IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. 255-DBA of 1995

Date of Decision :- January 22, 2007

State of Haryana ....APPELLANT

VERSUS

Surat Singh and another ....RESPONDENTS

Criminal Revision No.360 of 1995

Ramphal …PETITIONER

VERSUS

Surat Singh and another …RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE ARVIND KUMAR

Present:- Mr. Kulvir Narwal, Addl. Advocate General, Haryana
assisted by Mr. Gurmel Singh, Advocate for
Mr. J.V.Yadav, Advocate.

Mrs. Baljit Mann, Advocate
for respondent No.2.

Criminal Appeal No. 255-DBA of 1995 &
Criminal Revision No.360 of 1995

MEHTAB S.GILL, J.

This is an appeal against the judgment dated 15.9.1994 of the learned Sessions Judge, Bhiwani whereby he acquitted Surat Singh son of Bhani Ram and Attar Singh son of Surat Singh. They were charged under Sections 302/307/34 IPC and Sections 27/54/59 of the Arms Act. Learned counsel for the respondents has stated, that respondent/accused Surat Singh has died, appeal against him has thus abated.

The case of the prosecution is that in the area of police station Bawanikhera in District Bhiwani, Bhani Ram and Dod Ram, both brothers earned their livelihood by agriculture. Appellant Surat Singh is the son of Bhani Ram. His Son Attar Singh is the co-accused. Chhaju Ram, Fateh Singh deceased and Rattan Singh were the sons of Dod Ram. There was a dispute of Lamberdari. This dispute was between Surat Singh and Chhaju Ram PW10. It had been going on for some time. Witnesses had been examined. Om Parkash PW15, the real nephew of Chhaju Ram PW10, had also appeared. Fateh Singh deceased had filed an affidavit in favour of Chhaju Ram PW10. Surat Singh was declared as Lambardar by the Tehsildar, but the Deputy Commissioner, Bhiwani upset that order and Chhaju Ram PW10 was declared Lambardar.

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On 26.7.1992 at about 9.00 p.m., Ramphal Singh and Om Parkash PW15 were going to ease themselves on the outskirts of the village. The passage was from in front of the house of Surat Singh. An electric bulb was on. When Ramphal Singh and Om Parkash passed from the house of Surat Singh, they did not notice that he (Surat Singh) was standing there. Deceased Fateh Singh was coming from the opposite direction on foot after getting some dressing of his injury from the Primary Health Centre. Both Ramphal Singh and Om Parkash PW15 heard a gun shot fire. When they turned, they noticed that Surat Singh armed with a single barrel gun Ex.P13, hit Fateh Singh in his chest, abdomen and left arm. They went towards Fateh Singh to see his condition. Surat Singh reloaded his gun and fired. As a result of which, Fateh Singh received some pellet injuries, while some pellet injuries were received by Om Parkash PW15. Fateh Singh fell down. Accused Attar Singh son of Surat Singh was also present. He was armed with a two pronged jailis. He gave a jaili blow, which hit on the left side of the abdomen of Ramphal Singh. The jaili was snatched from him by Ramphal Singh, but again Attar Singh succeeded in snatching the jaili. Attar Singh then gave another blow on Ramphal Singh lathiwise, which hit on his forehead. A hue and cry was raised and the accused ran away. Fateh Singh was removed to the Civil Hospital, Bhiwani and was declared dead on 3.8.1992 at 9.50 p.m. FIR Ex.PM/2 was recorded on 27.7.1992 at 2.40

a.m. on the statement of Ramphal Singh (PW14) son of Fateh Singh. The special report reached the Ilaqa Magistrate, Bhiwani on the same day at 7.40 a.m.

The prosecution to prove its case brought into the witness box Sadhu Ram as PW1, Attar Singh Recordkeeper as PW2, Dr. S.K.Anand as PW3, Dr. K.L.Bawa as PW4, Dr. S.K.Sharma as PW5, Bhisham Chander as PW6, Amir Chand Taneja as PW7, Constable Randhir Singh as PW8, HC Mohinder Singh as PW9, Chhaju Ram as PW10, HC Abhe Singh as PW11, Dr. Ramesh Kumar as PW12, Dr. M.K.Jain as PW13, Ramphal Singh as PW14, Om Parkash as PW15, ASI Panjab Singh as PW16, Rajesh Khullar IAS as PW17 and Dr. L.A.Kumar Deputy Director F.S.L. Haryana.

Learned counsel for the appellant-State has argued, that there is no delay in lodging of the FIR. Occurrence had taken place on 26.7.1992 at 9.00 p.m. FIR Ex.PM/2 came into existence on 27.7.1992 at 2.40 a.m. at Police Station Bawanikhera, which was 9 K.Ms. away from the place of occurrence. The special report reached the Ilaqa Magistrate, Bhiwani on 27.7.1992 at 7.40 a.m. The name of the accused, the injured eye witness Ramphal Singh PW14 son of the deceased and the other eye witness Om Parkash PW15, who was also injured in the occurrence, have been named. The motive has been spelt out. The dispute was regarding the Lambardari of the village, for which both the complainant and the accused party were trying to

become. The promptness of the FIR itself goes a long way in proving the case of the prosecution. Both the injured witnesses Ramphal Singh PW14 and Om Parkash PW15 corroborated each other inter se and also were corroborated by the medical evidence, as spelt out by Dr. S.K.Anand PW3 and Dr. S.K.Sharma PW5.

Learned counsel for the respondents has stated, that Surat Singh son of Bhani Ram, co-accused of Attar Singh, has died and thus appeal against him has abated. We are left with the appeal against respondent/accused Attar Singh. In the FIR Ex.PM/2, respondent Attar Singh has not been shown to be standing with his father Surat Singh (co-accused, since dead). He has allegedly come onto the scene at a later stage and thus, cannot be held liable under Section 34 IPC. At the most, he can be held liable under Section 323 IPC, for causing injuries to Ramphal Singh PW14 and that also of giving simple jaili blows on the left wrist, left side of stomach and blow lathiwise on his forehead. This has been reiterated by both the witnesses Ramphal Singh PW14 and Om Parkash PW15 in their statement before the Court. As per Dr. S.K.Anand PW3, who examined Ramphal Singh PW14, these injuries were superfluous and simple in nature.

Learned counsel has further argued, that there is an unexplained delay of six hours between the occurrence and the FIR Ex.PM/2 coming into existence. The distance between the place of occurrence and the police station is only 9 K.Ms. The delay in fact

was used to manipulate and to put up a false case against the respondent.

We have heard the learned counsel for the parties and perused the record with their assistance.

Appeal against Surat Singh son of Bhani Ram has abated, as he has died. When going through the FIR Ex.PM/2, it comes out that deceased Fateh Singh when he was going back to his house after getting dressing done on an injury from the Primary Health Centre, was confronted by Surat Singh, since dead. Surat Singh stated that he would teach him a lesson for assisting Chhaju Ram in the case of lambardari. Both Ramphal Singh PW14 and Om Parkash PW15, who had gone out to ease themselves saw, that after Surat Singh had confronted deceased Fateh Singh, he fired from his .12 bore single barrel gun, which he had held in his hands. The first gun shot hit Fateh Singh in his chest, stomach and left arm. Ramphal PW14 went to rescue his father, Surat Singh fired another gun shot, which hit Fateh Singh and Om Parkash PW15. One can safely presume that after hearing these gun shots, respondent Attar Singh came out armed with a jaili and gave two jaili blows directly on the left hand, wrist and the left side of stomach of Ramphal Singh PW14. He gave another jaili blow lathiwise on the forehead of Om Parkash PW15. Similarly, in the statement before the Court, both theses witnesses Ramphal PW14 and Om Parkash PW15, have not stated that at the

time when Surat Singh fired at deceased Fateh Singh that respondent/accused Attar Singh was standing at his side. It is clear that respondent Attar Singh did not have the intention or the knowledge to commit the murder of Fateh Singh. It was Surat Singh who had planned, not to forgive Fateh Singh who was helping Chhaju Ram in the dispute of lambardari, which Surat Singh had lost in the Court of Deputy Commissioner, Bhiwani. The injuries on the person of Ramphal Singh PW14 are simple injuries as per Dr. S.K.Anand PW3, who prepared the medico legal report. Both the injured witnesses Ramphal Singh PW14 and Om Parkash PW15 are stamped witnesses. They corroborated each other inter se and also are corroborated by the medical evidence, as spelt out by Dr. S.K.Anand PW3, Dr. K.L.Bawa PW4 and S.K.Sharma PW5.

FIR in this case is prompt. Occurrence had taken place on 26.7.1992 at 9.00 p.m. FIR Ex.PM/2 came into existence on 27.7.1992 at 2.40 a.m. and the special report reached the Ilaqa Magistrate, Bhiwani on the same day at 7.40 a.m.

Appeal of the State is allowed. Respondent Attar Singh is convicted under Section 323 IPC for causing simple injuries to Ramphal Singh PW14. He has already undergone six months of imprisonment. He is sentenced to imprisonment already undergone.

(MEHTAB S.GILL)
JUDGE

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(ARVIND KUMAR)
January 22, 2007 **JUDGE**
SKA

WHETHER TO BE REFERRED TO REPORTER? YES/NO